

**Endangered and Nongame Species Advisory Committee
Meeting Minutes
January 18, 2023**

**Assunpink Conservation Center
Robbinsville, NJ**

Members in attendance: Rick Lathrop (chair), Jim Applegate, Joanna Burger, Emile DeVito, Russ Furnari, Howard Geduldig, Erica Miller, Howard Reinert.

Absent: Robin Dougherty, Jane Morton Galetto, David Mizrahi

Staff in attendance: Dave Golden (Assistant Commissioner) via online, Lisa Barno (Assistant Director), John Heilferty (Chief ENSP), Kathy Clark, Robert Somes and Sharon Petzinger (ENSP), Mary Monteschio (NJFW).

Public: Marion McClary and Catherine Tredick (new members), Carol Applegate

Meeting called to order at 10:10 AM.

The public notice for this meeting was read by J. Heilferty.

Introductions of those in attendance.

Approval of Minutes

H. Geduldig made a motion to approve the minutes from the November meeting, seconded by R. Furnari. There was no discussion and the minutes were approved unanimously (R. Lathrop abstained).

Report by Assistant Commissioner Dave Golden

AC Golden spoke from remote location due to Covid. He regrets missing this meeting that is likely the last with members J. Applegate and J. Burger.

The Recovering America's Wildlife Act (RAWA) did not get approved in the last Congress, which was a big disappointment. Some items that did get funded in the Congress's omnibus were NAWCA, Highlands, and Delaware River Conservation Fund. We are pushing on the state level to get better support for F&W programs. The preparation done for RAWA identified many priority projects that are still funding priorities.

AC Golden appreciates the work of the nominations committee for ENSAC appointments, and the Commissioner's office promises to confirm them in the next two weeks.

AC Golden expressed appreciation for the long term service and contributions to the ENSAC and ENSP by Drs. Applegate and Burger.

Several years ago the ENSAC examined their bylaws and made important changes, including setting term limits, which showed a level of maturity and consideration for the best interests of the Committee and its role in the DEP.

Legislative Updates

M. Monteschio had provided the legislation list as of 1/1/23. We are in the middle of a legislative session, with few changes at this time. In the update provided, red highlights the updates.

E. DeVito notes the invasive species bill was released from NJ Senate committee; it will reestablish the invasive species council. There's a meeting with senators on 1/19. Ideally this bill will be as strong as those in surrounding states.

Public Input

None

Updates

Nominations subcommittee – H. Geduldig

Update: there are two ENSAC appointments awaiting the DEP Commissioner's approval. Welcome to Dr. M. McClary and Dr. C. Tredick! The next replacement will be for J. Galetto, whose term expires in April; hers is the qualified non-profit seat. Nominating Committee is soliciting suggestions. J. Heilferty notes the DEP website also posted the notice soliciting non-profit candidates; that notice was posted 12/21/22 and will close on 1/31/23.

The nominations memo to the DEP Commissioner's office requested appointment of M. McClary and C. Tredick, and reappointment of H. Reinert and D. Mizrahi. C. Tredick will complete Dr. Applegate's current term through 3/31/23 and begin a new term as of 4/1/23. M. McClary's term technically started in 2022 so his term will run through 2026.

AC Golden announced that this is also the last meeting for Chief J. Heilferty, and he wanted to recognize John's important contribution to endangered and nongame wildlife conservation in New Jersey.

Update on Chinese Pond Mussels – Robert Somes

This non-native and invasive species was first documented in NJ during 2010 in a former fish farm in Hunterdon County. An aggressive eradication effort in 2019 was thought to be effective. Rutgers has since conducted eDNA surveys and detected it in one of the fish farm ponds and one location in the Raritan River. In 2022 Rutgers found continued presence in one impoundment in the Wickecheoke Preserve and two detections downstream of the preserve, and a repeated detection in the Raritan.

E. DeVito noted the eradication work initially done by NJCF and NJFW. Group discussion included the possible separate invasion in the Raritan location. The host fish, primarily non-

native carp, is likely to play a role in the distribution of the invasive mussel. NJFW lists invasive species as potentially dangerous species that should not be thrown back by anglers.

At the Wickecheoke Creek Preserve, Chinese Pond Mussel seems to persist in the pond/cell that gets the most freshwater input and where controls may have been most diluted. Eradication needs to continue to completely remove it. At the Island Farm Fish Weir (off Raritan River), this is more of an open system, and the likely place where they are persisting is immediately above the dam.

Next steps:

Physical surveys and confirmation at all sites.

Another round of eDNA surveys.

Second eradication effort at Wickecheoke Preserve.

Investigate the history of aquaculture/fish farming that may have imported carp elsewhere in NJ.

Partnership with USFWS, Rutgers, NJCP, others in DEP.

Mussel hatcheries and stocking – we are doing feasibility study of Hackettstown Fish Hatchery to allow for complete rearing of mussels or to finish “started” mussels obtained from other hatcheries. It might allow partnerships with other (non-NJ) hatcheries that are rearing Brook Floater and other species of conservation interest. There’s also the potential to acquire mussels for stocking from propagation facilities in adjacent states in the Delaware River basin. We would weigh opportunities against risk, with concern for genetics and biosecurity.

New Business

Mussel restoration opportunity – J. Heilferty

There was a natural resources settlement in the Easton area that resulted in funding for PA and mussel conservation. PA contracted with a VA hatchery to obtain yellow lampmussel, alewife floater, and eastern pond mussel, with some leftover for NJ release. NJFW is looking to determine suitable sites for such a release and develop a plan for handling and monitoring; which also helps us learn the process that may help with future efforts.

Discussion included genetic integrity and biosecurity of the source. The VA hatchery sent their mussels for further rearing to Partnership for Delaware Estuary (PDE) which is rearing in ponds. J. Burger asked about the biological effects of captive-reared and their long term viability, as well as competition with existing mussels.

Shoreline access rule to be proposed – J. Heilferty

Background: The ENSCA of 1973 mandated the creation of an endangered species list, and prohibited the taking, possession, transportation, importation, exportation, sale or offer for sale, or shipment of any nongame species. The Act empowered the Commissioner to establish programs deemed necessary for the conservation and management of nongame and endangered species. It authorizes the DEP to adopt rules and regulations necessary for the implementation and administration of the Act.

ENSP has employed beach access restrictions to protect beach-nesting and migratory shorebirds, and we have found potential conflict with the Public Trust Doctrine that provides citizens with the universal right to access “tidal waters” that are managed as a public trust.

In 2019, the NJ Legislature amended law to identify the valid reasons to restrict public access in tidal areas; public access may be restricted to protect critical habitat areas from injurious uses, or threatened or endangered species or their habitats from injury or injurious uses.

We suggest that ENSP could involve ENSAC in the process of establishing restricted areas under this new rule once it is adopted. Any proposal for a restricted area would be fully described in ENSAC pre-meeting materials; affected property owners would be notified; NJFW would provide the facts of all proposals. These meetings would be open to public comment at a regularly scheduled ENSAC meeting, for ENSAC approval. J. Heilferty seeks to confirm the Committee’s interest in being a meaningful part of this process.

Discussion: NJFW has been advised to reach out to stakeholders, and that could be by webinar as well as meetings. The new rule will set out a process to DEP and stakeholders, and the proposed rule itself will have public comment period. R. Lathrop stated how he interpreted the role of ENSAC in this proposed process: that ENSAC would be reviewing the science justifying a shoreline restriction, and not weighing the value of public access, so while public comment would be available at a meeting, the public’s concerns may not be part of ENSAC’s consideration. R. Lathrop reiterated that ENSAC would not be the final decision, only advising the DEP. He raised the concern that this aspect may be not understood by the affected public.

AC Golden said there is a way to bring ENSAC into the conversation without having ENSAC be the focus of public review. Further discussion centered on how DEP facilitate public comment on science aspects of the policy.

For now, J. Heilferty notes we will not rely on an ENSAC meeting for public comments although we will not exclude such.

2022 Bald Eagle Project report – K. Clark, ENSP
Postponed until a future meeting.

Other Business

Next regular ENSAC meeting is scheduled for Wednesday, March 15, but Chair asks to move it to Wednesday March 8. It will be an in-person meeting. Meeting room in the CRO office building is already reserved for all meetings and can accommodate public online attendance, but it is recommended that members and staff attend in person.

ENSAC meetings in 2023 will be in-person unless otherwise arranged.

J. Burger made a motion to adjourn, meeting adjourned 12:54 PM.

Summary of Action Items

- 1) J. Heilferty will provide a final copy of the Pollinator Standards document when it is done.
- 2) Report on the Marine Fisheries Council's blue claw crab subcommittee review of the Diamondback Terrapin issues, when available.
- 3) (Continuing item) Identify a longer term strategy for ENSAC involvement in ASMFC's actions.